

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

TEXAS EASTERN TRANSMISSION,	:	
LP,	:	
	:	CIVIL ACTION - EQUITY
Plaintiff	:	
	:	No. 02-CV-4956
v.	:	
	:	(Judge Padova)
THOMAS W. FLECK and	:	
CATHY ANN FLECK,	:	
	:	FILED ELECTRONICALLY
Defendants	:	

**TEXAS EASTERN'S MOTION TO
DISMISS COUNTERCLAIM FOR DAMAGES**

Plaintiff Texas Eastern Transmission LP ("Texas Eastern"), through its counsel, Keefer Wood Allen & Rahal, LLP, hereby moves to dismiss defendants' counterclaim pursuant to Fed. R. Civ. P. 12(b)(6), as follows.

1. Texas Eastern commenced this action for injunctive relief by filing a complaint on July 22, 2002.

2. A consent decree entered on August 12, 2002, resolved issues pertaining to Texas Eastern's request for an injunction, but provided for an eventual hearing on defendants' claim for

damages allegedly arising from the pipeline construction project that is the subject of this action.

3. On May 9, 2003, defendants filed a counterclaim for damages against Texas Eastern.

4. The Court has scheduled a hearing on damages pursuant to paragraph 9 of the consent decree, to take place on August 14, 2003.

5. Defendants' counterclaim fails to state legally sufficient claims for damages under applicable Pennsylvania law, for the following reasons, which are explained more fully in the accompanying brief:

- a. Defendants improperly request an award of damages for "loss of value" to their property **and** for repair and restoration costs, in the conjunctive, rather than in the alternative;
- b. Defendants improperly request an award of damages for "loss of use and quiet enjoyment" of their property, which is inconsistent with the easement agreements between the parties and applicable law; and
- c. The counterclaim contains an unauthorized request for an award of attorney's fees to defendants.

WHEREFORE, Texas Eastern respectfully requests that the Court grant its motion and issue an order dismissing the counterclaim and requiring that defendants promptly file an amended counterclaim that conforms to applicable Pennsylvania law. A proposed order accompanies this motion.

Respectfully submitted,

KEEFER WOOD ALLEN & RAHAL, LLP

Dated: June 2, 2003

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CERTIFICATE OF SERVICE

I, Charles W. Rubendall II, Esquire, one of the attorneys for plaintiff, hereby certify that I have served the foregoing paper upon counsel of record this date by depositing a true and correct copy of the same in the United States mail, first-class postage prepaid, addressed as follows:

Jeffrey G. Trauger, Esquire
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By s/Charles W. Rubendall II
Charles W. Rubendall II

Dated: June 2, 2003